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IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1973
No. 73-1569

In the Matter of
RANCHERO MOTOR INN, INC.,
Bankrupt

GALEY CONSTRUCTION CO., & ASPHALT PAVING CO.,
Petitioners

v.

UTAH MORTGAGE LOAN CORPORATION,
Respondent

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

Petitioners in their Petition for Certiorari have attached copies of the opinions rendered by the lower courts in this matter.

JURISDICTION

Respondent submits that any appellate jurisdiction of this matter that might rest with the

United States Supreme Court would be the result of Title 11, U.S.C.A., Section 47(c), which should be considered in conjunction with the section cited by Petitioners. However, since this case involves nothing of importance to the administration of the Bankruptcy Act of the United States, the appeal must rest upon the Petitioners' application for a writ of certiorari and the jurisdictional ground cited therein.

QUESTIONS PRESENTED

Respondent is in substantial agreement with the Questions Presented as stated in the Petition.

STATUTORY PROVISIONS

Petitioners have set forth two Idaho statutes which are involved in this matter. Respondent agrees that those two statutes are applicable.

STATEMENT OF CASE

Petitioners' Statement of the Case is substantially correct, at least as far as is necessary for consideration of the Petition for Certiorari. However, Respondent would like to add that the Deed of Trust filed by Utah Mortgage Loan Corporation was duly recorded prior to the institution of any labor or the delivery of any materials bought by the Petitioners, or by any of the other lien claimants.

In addition, it should be stated that pursuant to the "obligatory optional rule" mentioned in the Petition, the Referee, the District Court and the United States Court of Appeals found that the agreements between Utah Mortgage Loan Corporation and Ranchero provided for obligatory advances and that, therefore, pursuant to said rule, the advances made by Utah Mortgage were entitled to priority.

Petitioners' Statement of the Case implies that the Referee, the United States District Court and the United States Court of Appeals did not apply the "obligatory optional rule". In fact, they did apply said rule, and it was on the basis of said rule that they found that the Utah Mortgage advances were entitled to priority.

ARGUMENT

The Petition for Certiorari should be denied. This case does not involve issues of the importance or significance or of the kind or type of case which is entitled to, or which should be, reviewed by the United States Supreme Court.

As is apparent from the Statement of Case made by the Petitioners, this case involves basically an interpretation of the terms of a loan agreement between Utah Mortgage Loan Corporation and Ranchero Motor Inn, Inc., Bankrupt. The loan agreement involved has now been interpreted by the Bankruptcy

Court, by the United States District Court and by the Ninth Circuit Court of Appeals. Each of those courts has held that pursuant to the terms of the loan agreement, all advances made by Respondent were obligatory advances and were therefore entitled to priority over any intervening lien claims. This finding is based upon the obligatory optional rule, which is the prevalent rule accepted by the Supreme Court of the State of Idaho. Boise Payette Lumber Co. v. Winward, 47 Idaho 485, 276 Pac. 971 (1929), Goss v. Iverson, 72 Idaho 240, 238 P.2d 1151 (1951), Biersdorff v. Brumfield, 93 Idaho 569, 468 P.2d 301 (1970).

As can be seen, the issue in this case is really a dispute among three lien creditors of a bankrupt estate. The determination of the particular question as to lien priority is a matter involving the law of the State of Idaho and does not in any way involve an issue of federal law. Even though the case has arisen in the Bankruptcy Court, it is a controversy among three creditors and does not involve an issue of bankruptcy law or the administration of the Bankruptcy Courts.

In fact, what is truly involved is a particular interpretation of the terms of a particular loan agreement between two parties in light of, or pursuant to, the particular law of the State of

Idaho. The issues of this case being issues of Idaho law are not questions properly reviewable by the United States Supreme Court and, in such circumstances, the Petition for Certiorari should be denied.

As the Court is certainly aware, Rule 19 of the Revised Rules of the Supreme Court of the United States provides as follows:

"CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered.

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual

course of judical proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari."

This case does not involve any of the considerations mentioned in Rule 19. The only possible section that might be applicable is the one which states that there has been a decision of an important state or territorial question in a way in conflict with applicable state or territorial law. The decision in this case amounts to an application of state law and in no way affects or conflicts with the applicable state law. The courts which have dealt with the case have all recognized the Idaho law regarding obligatory and optional advances by a lender. The case is merely an application of that law to a particular set of facts.

It should be pointed out that the case has been decided by Merlin S. Young, the Bankruptcy Referee (now Bankruptcy Judge, of course,) who, prior to becoming the Bankruptcy Referee, was the senior District Judge at the trial court level of the state's most populous county. As such, he was

a judge extremely well versed in matters of Idaho state law. In the United States District Court the matter was decided by District Judge Ray McNichols, a former practicing Idaho attorney, who has sat on the bench for the United States District Court for the District of Idaho for several years and, also, is well versed in Idaho law. Surely these able jurists have understood and correctly applied the law of the State of Idaho.

As can be seen from the decision of the Ninth Circuit Court of Appeals, it was their opinion that the decisive issues of this case involved Idaho law. As such, federal courts should be very reluctant to attempt to substitute their opinions in a matter which has been previously determined by judges familiar with Idaho law. Since the Supreme Court ordinarily on certiorari accepts the determination of state law as found by the Court of Appeals, particularly when the same finding has been made by a federal district court, there would be little or nothing for this Court to review. See, e.g. Appalachian Power Co. v. American Institute of Certified Public Accountants, 80 S.Ct. 16, 4 L.ed.2d 30 (1959). Also, the Supreme Court usually will not set aside a lower court ruling where the lower courts are applying local law, except upon a plain showing of error. Palmer v. Hoffman, 63 S.Ct. 477, 318 U.S. 109, 87 L.ed. 645, 144 ALR 719, reh.

denied, 63 S.Ct. 757, 318 U.S. 800, 87 L.ed. 1163 (1943). Certainly a case such as this one, because it is so deeply or entirely involved with issues of state or local law, does not present an appropriate vehicle for the exercise of the certiorari power of the federal court system.

The particular issues presented in this case fall within the types of considerations stated in the case of Wolf v. Weinstein, 83 S.Ct. 969, 372 U.S. 633, 10 L.ed.2d 33 (1963). In that case, at page 972 of the Supreme Court Reporter opinion, the Court stated:

> "We decide only the issues presented by the Court of Appeals' reversal of the District Court's order applying Sec. 249 to Weinstein and Fried, adjudicated sub nom. In re Nazareth Fairgrounds and Farmer's Market, Inc., Debtor, 2 Cir., 296 F.2d 678. Decision of those issues, which involve the reach of Sec. 249, is important in administration of the Bankruptcy Act. But our consideration of the issues underlying the order of the District Court reversed sub nom. Fried v. Margolis, 2 Cir., 296 F.2d 670, persuades us that the grant of certiorari to review these issues was improvident. Oral argument brought into sharper focus than was apparent at the time we granted the writ that the controversy over the stock interests primarily implicates questions of Pennsylvania law and presents no federal question of substance. In the circumstances, the writ of certiorari as to that judgment of the Court of Appeals is dismissed as improvidently granted."

As with the Wolf v. Weinstein case, the questions presented in this case are questions of the application of Idaho law and present no federal question of substance. As such, Respondent respectfully submits that the Petition for Certiorari should be denied.

CONCLUSION

For the above reasons, Respondent submits that the Petition for Certiorari should be denied.

Respectfully submitted,

MOFFATT, THOMAS, BARRETT & BLANTON

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF FOR RESPONDENT IN OPPOSITION was mailed, by depositing a copy of the same in the United States mail at Boise, Idaho, postage prepaid, to the following attorneys of record, this 17th day of May, 1974:

Clemons, Cosho, Humphrey & Samuelsen
1110 Bank of Idaho Building
Boise, Idaho 83702

J. Charles Blanton

J. Charles Blanton